

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: DePUY ORTHOPAEDICS, INC.)
ASR HIP IMPLANT PRODUCTS) MDL No. 1: 10 md 2197
LIABILITY LITIGATION)
)
) **SHORT FORM COMPLAINT**
) **FOR**
) **DePUY ORTHOPAEDICS, INC.**
) **ASR HIP IMPLANT PRODUCTS**
) **LIABILITY LITIGATION**

This applies to:

Dana Moore and Teresa Moore v. DePuy
Orthopaedics, Inc. *et al*

JURY TRIAL DEMAND

DANA MOORE and TERESA MOORE

Plaintiffs

- against

Civil Action No. _____

DePUY ORTHOPAEDICS, INC., DePUY
INC., DePUY INTERNATIONAL LIMITED,
JOHNSON & JOHNSON, JOHNSON &
JOHNSON SERVICES, INC.
JOHNSON & JOHNSON INTERNATIONAL

Defendants

**ABBREVIATED SHORT FORM COMPLAINT FOR DePUY ORTHOPAEDICS
INC. ASR HIP IMPLANT PRODUCTS LIABILITY LITIGATION**

1. Plaintiffs, Dana Moore and Teresa Moore, state and bring this civil action before the Court for the United States District Court for the Northern District of Ohio as a related action in the matter entitled IN RE: DePUY ORTHOPAEDICS, INC. ASR HIP

IMPLANT PRODUCTS LIABILITY LITIGATION, MDL No. 2197. Plaintiff is filing this short form complaint as permitted by Case Management Order No. 4 of this Court.

ALLEGATIONS AS TO VENUE

2. Venue of this case is appropriate in the United States District Court of the State of for the Northern District of Ohio. Plaintiff states that but for the Order permitting direct filing into the Northern District of Ohio pursuant to Case Management Order No. 4, Plaintiff would have filed in the Western District of the United States District Court of the State of Texas. Therefore, Plaintiff respectfully requests that at the time of transfer of this action back to the trial court for further proceedings that this case be transferred to the above referenced District Court.

3. Plaintiff Dana Moore is a resident and citizen of Leander, Williamson County, Texas and claims damages as set forth below. Plaintiff's Spouse Teresa Moore is a resident and citizen of Leander, Williamson County, Texas and claims damages as a result of loss of consortium.

4. Plaintiff was born on December 1, 1967.

Plaintiff claims damages as a result of:

- ☒ injury to herself/himself
- ☐ injury to the person represented
- ☐ wrongful death
- ☐ survivorship action
- ☒ economic loss
- ☒ loss of services
- ☒ loss of consortium

ALLEGATIONS AS TO INJURIES

5. Plaintiff was implanted with a DePuy ASR hip implant on his/her Left hip on or about December 17, 2007 at the St. David Medical Center, in Austin, TX by Eric Matthew Heinrich, M.D.

6. On or about various dates postoperatively, Plaintiff suffered the following personal injuries and economic injur(ies) as a result of the implantation with the ASR hip implant: pain, stiffness, discomfort, and weakness which in turn negatively affects plaintiff's mobility and quality of life. Plaintiff suffers from anxiety about the recalled hip implant, the toxicity of the metal in the body, and the consequent need for medical monitoring.

7. Plaintiff has not yet scheduled an explantation of the ASR hip implant.

8. Plaintiff has suffered injuries as a result of the implantation and explantation of the DePuy ASR hip implant manufactured by defendants as shall be fully set for the in Plaintiff's Fact Sheet and other responsive documents provided to the defendants and are incorporated by reference herein;

9. At the time of implantation with the ASR hip implant, the Plaintiff resided in Leander, TX 78641.

10. The defendants by their actions or inactions, proximately caused Plaintiff's injuries.

11. The plaintiff could not have known that the injuries he/she suffered were as a result of a defect in the ASR hip implant until after the date the device was recalled from the market and the plaintiff came to learn of the recall.

12. The plaintiff could not have known that he/she was injured by excessive levels of chromium and cobalt until after the date he/she had his/her blood drawn and he/she was advised of the results of said blood-work.

13. As a result of the injuries Plaintiff sustained, he/she/they are entitled to recover compensatory damages for pain and suffering and emotional distress and for economic loss as well as punitive damages.

ALLEGATIONS AS TO DEFENDANTS
SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

14. The following claims and allegations are asserted by Plaintiff and are herein adopted by reference:

- X FIRST CAUSE OF ACTION
(NEGLIGENCE);
- X SECOND CAUSE OF ACTION
(NEGLIGENCE PER SE);
- X THIRD CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-DEFECTIVE DESIGN);
- X FOURTH CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-MANUFACTURING DEFECT);
- X FIFTH CAUSE OF ACTION
(STRICT PRODUCTS LIABILITY-FAILURE TO WARN);
- X SIXTH CAUSE OF ACTION
(BREACH OF EXPRESS WARRANTY)
- X SEVENTH CAUSE OF ACTION
(BREACH OF WARRANTY AS TO MERCHANTABILITY);
- X EIGHTH CAUSE OF ACTION
(BREACH OF IMPLIED WARRANTIES);
- X NINTH CAUSE OF ACTION
(FRAUDULENT MISREPRESENTATION);

- X TENTH CAUSE OF ACTION
(FRAUDULENT CONCEALMENT);
- X ELEVENTH CAUSE OF ACTION
(NEGLEGENT MISREPRESENTATION);
- X TWELFTH CAUSE OF ACTION
(FRAUD AND DECEIT);
- X THIRTEENTH CAUSE OF ACTION
(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER STATE
LAW);
- X FOURTEENTH CAUSE OF ACTION
(MISREPRESENTATION BY OMISSION);
- X FIFTEENTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD);
- X SIXTEENTH CASUE OF ACTION
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS);
- X SEVENTEETH CAUSE OF ACTION
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS);
- X EIGHTEENTH CAUSE OF ACTION
(GROSS NEGLIGENCE/MALICE);
- X NINETEENTH CAUSE OF ACTION
(LOSS OF CONSORTIUM);
- X TWENTIETH CAUSE OF ACTION
(PUNITIVE DAMAGES);
- X TWENTY-FIRST CAUSE OF ACTION
(MEDICAL MONITORING)
- X TWENTY-SECOND CAUSE OF ACTION
(VIOLATION OF APPLICABLE STATE CONSUMER FRAUD
STATUTE – Texas Deceptive Trade Practices Act, Tex. Bus. & Com.
Code § 17.46);
- X TWENTY-THIRD CASUE OF ACTION
(RESTITUTION OF ALL PURCHASE COSTS AND DISGORGEMENT
OF ALL PROFITS FROM MONIES THAT PLAINTIFF INCURRED IN
PURCHASE OF THE HIP IMPLANT)

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendants as follows:

1. For compensatory damages requested and according to proof;
2. For punitive or exemplary damages against Defendants;
3. For all applicable statutory damages of the state whose laws will govern this action;
4. For medical monitoring, whether denominated as damages or in the form of equitable relief;
5. For an award of attorneys' fees and costs;
6. For prejudgment interest and the costs of suit; and,
7. For such other and further relief as this Court may deem just and proper;

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all claims in this action.

Date: January 29, 2015

By: /s/ Brian U. Loncar

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